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10 Attorneys for Defendant  
11 GAP INC.

12 UNITED STATES DISTRICT COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16 SAN FRANCISCO DIVISION  
17

18 JOEL RUIZ, On Behalf of Himself and All Others  
19 Similarly Situated,

20 Plaintiff,

21 v.

22 GAP, INC., and DOES 1-9 inclusive,

23 Defendants.

Case No. C 07-5739 SC

**DECLARATION OF WILLIAM  
STERN IN SUPPORT OF  
DEFENDANT GAP INC.'S MOTION  
TO STRIKE PLAINTIFF'S CLASS  
DEFINITION OR, IN THE  
ALTERNATIVE, TO AMEND THE  
CLASS DEFINITION**

Date: September 5, 2008  
Time: 10:00 a.m.  
Room: Courtroom 1, 17th Floor  
Judge: Honorable Samuel Conti

Complaint filed: November 13, 2007

24 I, William L. Stern, hereby declare as follows:

25 1. I am a member of the State Bar of California and am admitted to practice before  
26 this Court. I am a partner in the law firm of Morrison & Foerster, LLP, attorneys for defendants  
27 in this action. These facts are known personally to me in that capacity. I submit this declaration  
28 in support of Defendant GAP Inc.'s Motion to Strike Plaintiff's Class Definition or, in the  
Alternative, to Amend the Class Definition. If called as a witness, I would testify to the facts  
listed below.

2. Prior to filing this motion, I engaged in a meet-and-confer negotiation with Plaintiff's counsel. On July 7, 2008, I mailed a letter to Ben Barnow and Tracy D. Rezvani, Plaintiff's counsel in this action, requesting that they stipulate to amend the class definition to only include those members of the putative class that are similarly situated to Plaintiff Joel Ruiz, i.e., persons who have been exposed to an increased risk of identity theft but who have not actually experienced identity theft as a result of the incident. A true and correct copy of this letter is attached to this declaration as Exhibit A-1. Ms. Rezvani responded in a letter dated July 14, 2008, and refused to voluntarily amend the class definition. A true and correct copy of Ms. Rezvani's letter is attached to this declaration as Exhibit A-2. On July 15, 2008, I responded to Ms. Rezvani's letter and reiterated our position regarding why the class definition should be amended to exclude those persons who, unlike Mr. Ruiz, have suffered or claim to have suffered an actual identity theft as a result of the incident. A true and correct copy of this letter is attached to this declaration as Exhibit A-3. Ms. Rezvani responded in a letter dated July 22, 2008, stating that the parties "have to agree to disagree": A true and correct copy of this letter is attached to this declaration as Exhibit A-4.

3. On June 18, 2008, I took the deposition of Plaintiff Joel Ruiz at the San Francisco office of Morrison & Foerster LLP. Attached hereto as Exhibit B is a true and correct copy of excerpts from Mr. Ruiz's deposition transcript, in particular, pages 23, 25, 37, 73, 74, 113, and 116-118. To the best of my recollection, the questions asked and the answers given on those excerpted pages are a true and correct recital of what was said.

4. On May 9, 2008, I propounded Defendant GAP Inc.'s First Set of Interrogatories to the Plaintiff. Attached hereto as Exhibit C is a true and correct copy of Plaintiff's Objections and Responses to Defendant GAP Inc.'s First Set of Interrogatories.

I declare under penalty of perjury that the foregoing is true and correct and this Declaration was executed in San Francisco, California, on this 1st day of August, 2008.

By:                      /s/ William Stern